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23 UNITED STATES DISTRICT COURT

24 FOR THE CENTRAL DISTRICT OF CALIFORNIA

25 UNITED STATES OF AMERICA,

No. CR 20-326 (A) -JFW

26 Plaintiff,

GOVERNMENT'S OPPOSITION TO
DEFENDANT JOSE HUIZAR'S MOTION TO
COMPEL DISCOVERY

v.

JOSE LUIS HUIZAR, et al.

Date: March 22, 2021

Defendants.

Time: 8:00 a.m.

Location: Courtroom of the Hon.
John F. Walter

Plaintiff United States of America, by and through its counsel of record, the Acting United States Attorney for the Central District of California and Assistant United States Attorneys Mack E. Jenkins, Veronica Dragalin, and Melissa Mills, hereby files its opposition to defendant JOSE HUIZAR's Motion to Compel Discovery (CR 160).

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1 This opposition is based upon the attached memorandum of points
2 and authorities, the files and records in this case, and such further
3 evidence and argument as the Court may permit.

4 || Dated: March 1, 2021

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant JOSE HUIZAR ("defendant") is charged in a 132-page First Superseding Indictment with various violations stemming from his corrupt dealings as a former Los Angeles City Councilmember, namely, abusing his position and breaching the public's trust for power and profit. The criminal complaint, original indictment, and first superseding indictment in this case were all filed during the COVID-19 pandemic that has had far-reaching impacts across the globe.

On February 22, 2021, defendant filed a motion to compel production of information regarding any COVID-19 modifications to the grand jury proceedings in this case "in order to evaluate potential motion practice." (CR 160.) Defendant also seeks legal instructions provided to the grand jury on the counts ultimately returned in the indictment to help answer the question of "what the government thinks is a crime." (Id.) Because these records are protected by the doctrine of grand jury secrecy, and because defendant has failed to make the required showing of particularized need and materiality, the motion should be denied.

II. FACTUAL AND PROCEDURAL BACKGROUND

21 On June 22, 2020, the government filed a criminal complaint
22 charging defendant with one count of Racketeer Influenced and Corrupt
23 Organizations ("RICO") conspiracy, in violation of 18 U.S.C.
24 § 1962(d), with an accompanying 116-page affidavit setting forth the
25 government's theory of the case and detailed presentation of evidence
26 in support of the charge. (CR 1.)

27 On July 30, 2020, the grand jury returned a 113-page indictment,
28 charging defendant in thirty-four counts with violations of 18 U.S.C.

1 § 1962(d) (RICO conspiracy), 18 U.S.C. §§ 1341, 1343, 1346 (Honest
2 Services Mail and Wire Fraud), 18 U.S.C. § 1952(a)(3) (Interstate and
3 Foreign Travel in Aid of Racketeering), 18 U.S.C. § 666(a)(1)(B)
4 (Bribery Concerning Programs Receiving Federal Funds), 18 U.S.C.
5 § 1956(a)(1)(B)(i), (a)(2)(B)(i) (Money Laundering), 18 U.S.C. § 1014
6 (False Statements to a Financial Institution), 18 U.S.C. § 1001(a)(2)
7 (Making False Statements), 31 U.S.C. § 5324(a)(3) (Structuring of
8 Currency Transactions to Evade Reporting Requirements), 26 U.S.C.
9 § 7201 (Attempt to Evade and Defeat the Assessment and Payment of
10 Income Tax). (CR 36.)

11 On November 12, 2020, the grand jury returned a 138-page First
12 Superseding Indictment, charging defendant and five other defendants.
13 (CR 74 or “FSI.”) The substantive crimes charged against defendant
14 in the FSI are the same as in the original indictment. Among other
15 things, the FSI explicitly set forth seven types of “official acts”
16 performed by defendant and others, as part of the means of the RICO
17 conspiracy and scheme to defraud, including presenting motions,
18 voting, and exerting pressure on other City officials. (FSI
19 ¶¶ 42(b), 45(b).) In addition, each substantive count alleging a
20 violation of 18 U.S.C. § 666 explicitly sets forth the quid pro quo
21 agreement defendant reached with his co-schemers and co-conspirators,
22 alleging the benefits he accepted in connection with specific City
23 business or transactions. (FSI ¶¶ 49, 51, 53, 54, 56, 57.)

24 On February 22, 2021, defendant filed a motion to compel
25 production of two types of grand jury records:¹ (1) information

26 _____
27 ¹ Defendant has previously sought additional grand jury records.
28 On September 15, 2020, defendant filed a motion to inspect records
related to the grand juror selection process pursuant to 28 U.S.C.

(footnote cont'd on next page)

1 regarding COVID-19 modifications to the grand jury proceedings in
2 this case; and (2) legal instructions provided to the grand jury on
3 the counts ultimately returned in the indictment. Defendant seeks
4 the first category "in order to evaluate potential motion practice"
5 and the second to help answer the question of "what the government
6 thinks is a crime." (CR 160 or "Mot.")

7 On February 24, 2021, defendants DAE YONG LEE, 940 HILL, LLC,
8 and SHEN ZHEN NEW WORLD, LLC, filed joinders in defendant HUIZAR's
9 motion to compel. (CR 162, 163.)

10 **III. ARGUMENT**

11 **A. Legal Standards**

12 It is a fundamental tenet of the grand jury process that "the
13 proper functioning of the grand jury system depends on the secrecy of
14 the grand jury proceedings." Douglas Oil Co. of Cal. v. Petrol Stops
15 Northwest, 441 U.S. 211, 218 (1979). Rule 6(e)(3) of the Federal
16 Rules of Criminal Procedure provides narrow delineated exceptions to
17 the rule of secrecy, permitting disclosure of grand jury matters only
18 in limited circumstances. When a defendant requests disclosure of
19 grand jury matters, the court may authorize disclosure "upon a
20 showing that grounds may exist for a motion to dismiss the indictment
21 because of a matter that occurred before the grand jury." Fed. R.
22 Crim. P. 6(e)(3)(E)(ii). Thus, defendant's right of access to grand
23 jury materials turns on whether he meets the standard to dismiss an
24 indictment based on conduct occurring before the grand jury. See
25 United States v. Murray, 751 F.2d 1528, 1533-34 (9th Cir. 1985)
26 (defendants did not show a particularized need for grand jury

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§ 1867(f), which the Court granted in part and denied in part. (CR
65, 71.)

1 materials where "the claimed misconduct would not have compelled the
2 dismissal of the first superseding indictment").

3 The Supreme Court has "consistently construed [Rule 6(e)] to
4 require a strong showing of particularized need for grand jury
5 materials before any disclosure will be permitted." United States v.
6 Sells Eng'g, Inc., 463 U.S. 418, 443 (1983). "The standards the
7 district court should follow when lifting the secrecy of grand jury
8 proceedings are (1) that the desired material will avoid a possible
9 injustice, (2) that the need for disclosure is greater than the need
10 for continued secrecy, and, (3) that only the relevant parts of the
11 transcripts should be disclosed." United States v. Plummer, 941 F.2d
12 799, 806 (9th Cir. 1991). All three elements must be met to permit
13 disclosure.

14 Importantly, there is a presumption of regularity in grand jury
15 proceedings. United States v. R. Enterprises, Inc., 498 U.S. 292,
16 300 (1991). "Mere unsubstantiated, speculative assertions of
17 improprieties in the proceedings do not supply the particularized
18 need required to outweigh the policy of grand jury secrecy." United
19 States v. Ferreboeuf, 632 F.2d 832, 835 (9th Cir. 1980) (quotation
20 marks and citations omitted). Put simply, Rule 6(e) "is not an
21 invitation to engage in a fishing expedition to search for grand jury
22 wrongdoing and abuse when there are no grounds to believe that any
23 wrongdoing or abuse has occurred." United States v. Loc Tien Nguyen,
24 314 F. Supp. 2d 612, 616 (E.D. Va. 2004).

25 Regardless of whether the materials are "grand jury matters,"
26 "[t]o obtain discovery under Rule 16, a defendant must make a prima
27 facie showing of materiality," and "conclusory allegations of
28 materiality" do not suffice. United States v. Mandel, 914 F.2d 1215,

1 1219 (9th Cir. 1990). The threshold showing of materiality "requires
2 a presentation of 'facts which would tend to show that the Government
3 is in possession of information helpful to the defense.'" United
4 States v. Santiago, 46 F.3d 885, 894 (9th Cir. 1995) (citations
5 omitted).

6 **B. Defendant Has Not Made a Showing of Particularized Need and
7 Materiality for Discovery into What Transpired in the Grand
Jury Room**

8 In his first request, defendant seeks "any modification(s) to
9 [the U.S. Attorney's Office] pre-COVID (i.e., normal) grand-jury
10 procedures" and "any orders requiring or authorizing those
11 modifications,"² for example "grand jurors appearing by video,
12 witnesses wearing masks or testifying remotely." (Mot. at 1.)
13 Defendant seeks this information "to understand how, mechanically,
14 the grand jury in this case went about its inquest in order to
15 evaluate motion practice." (Id. at 2-3.)

16 The government has an obligation keep secret "a matter occurring
17 before the grand jury" unless an exception applies. Fed. R. Crim. P.
18 6(e) (2) (B) (vi). Defendant has cited no authority to support his
19 position that the information he seeks in the first request is not a
20 "matter occurring before the grand jury." Defendant relies on only
21 one case, namely, In re Special Grand Jury (for Anchorage, Alaska),
22 674 F.2d 778 (9th Cir. 1982), to argue that this information does not
23 implicate Rule 6(e) grand jury secrecy because the information covers
24 the "procedural aspects" of the operation of the grand jury. In that

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28 ² The General Orders and Orders of the Chief Judge issued in
this district to address the COVID-19 pandemic are publicly available
at <https://www.cacd.uscourts.gov/news/coronavirus-covid-19-guidance>.
The government is not aware of any other court orders related to
pandemic grand jury procedures.

1 case, the Ninth Circuit drew a distinction between transcripts and
2 the type of "ministerial" clerical records that are largely governed
3 by this Court's Jury Plan. Id. at 780. However, the Court noted
4 that even "ministerial" records could be subject to the grand jury
5 secrecy doctrine and cautioned that its use of that term "should not
6 be taken to indicate any settled judgment on our part that none of
7 the records could be classified as 'matters occurring before the
8 grand jury' as that expression is used in Rule 6(e), Federal Rules of
9 Criminal Procedure." Id. at 780, fn. 1. This case does not support
10 defendant's proposition that the material he seeks is not a "matter
11 occurring before the grand jury." Conversely, In re Special Grand
12 Jury (for Anchorage, Alaska) makes clear that even if the records he
13 seeks do not fall within the scope of Rule 6(e), they may still be
14 subject to the broader doctrine of grand jury secrecy that the Ninth
15 Circuit made clear extends beyond the borders of Rule 6(e). Id. at
16 781-82 (rejecting contention that "the whole grand jury secrecy
17 doctrine is encapsulated within the four corners of Rule 6(e)," and
18 noting in dicta that "[i]t would be reasonable to hold that [a
19 request for attendance records] runs afoul of the doctrine of grand
20 jury secrecy, in spite of the fact that it seems not to fall within
21 the scope of the Rule 6(e) language").

22 While In re Special Grand Jury (for Anchorage, Alaska) indicates
23 that even "ministerial" records are not necessarily immune from grand
24 jury secrecy rules, the information that defendant seeks to discover
25 about the conduct of proceedings before the grand jury cannot be
26 discounted as "ministerial." Unlike the records sought in that case
27 — summons authorizations, service extensions, and other paperwork
28 typically maintained by the Clerk of Court — defendant's motion does

1 not seek administrative information from the Court's clerical
 2 records. Instead, defendant seeks information from the government
 3 describing details of what took place in the grand jury room during
 4 the presentation of the indictment and superseding indictment in this
 5 case, namely whether the witnesses wore a mask and/or testified
 6 remotely, whether grand jurors appeared by video or were in the same
 7 physical location,³ and "how, mechanically, the grand jury in this
 8 case went about its inquest." (Mot. at 1-3.) Moreover, defendant's
 9 request here is both vague and expansive as, in attempting to define
 10 the scope of the request, he refers to "normal" grand jury
 11 procedures, which suggests that any disclosure here implicitly should
 12 also divulge what occurs during a so-called "normal" grand jury
 13 inquest. But defendant offers no explanation or outline of his
 14 understanding of what constitutes a "normal" grand jury proceeding
 15 and thus, as per the terms of his motion, would not be subject to
 16 disclosure. The Ninth Circuit has explained that Rule 6(e) is
 17 intended to "protect against disclosure of what is said or takes
 18 place in the grand jury room." United States v. Dynavac, Inc., 6

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20 ³ General Orders and Orders of the Chief Judge issued in this
 21 district to address the COVID-19 pandemic do not address the nature
 22 or mechanical workings of any government presentation or witness
 23 testimony before the grand jury. Moreover, they have not authorized
 24 grand juries to deliberate apart from each other, either remotely by
 25 video or telephonic conference, and instead refer to "in-person
 26 meetings" of the grand juries. Cf., Order of the Chief Judge 20-044
 27 (March 31, 2020) ("all regularly scheduled grand jury proceedings in
 28 the Central District of California are suspended and continued" and
 "[g]rand jurors will not otherwise be required to report for service
 ... during the period for which grand jury proceedings are
 suspended"); General Order 20-05 (April 13, 2020) (while authorizing
 certain hearings "by video and telephonic conference," ordering that
 "[i]n-person meetings of the grand juries shall remain suspended")
 (emphasis added); General Order 20-08 (May 28, 2020) (while
 authorizing certain hearings "by video and telephonic conference,"
 noting that "[i]n-person meetings of the grand juries may resume at
 the discretion of the Chief Judge") (emphasis added).

1 F.3d 1407, 1411-12 (9th Cir. 1993). Rule 6(e) protects "the essence
2 of what takes place in the grand jury room, in order to preserve the
3 freedom and integrity of the deliberative process." In re Grand Jury
4 Subpoena, 920 F.2d 235, 241 (4th Cir. 1990) ("The substantive content
5 of 'matters occurring before the grand jury' can be anything that may
6 reveal what has transpired before the grand jury.") (internal
7 citations omitted); see also In re Grand Jury Matter (Catania), 682
8 F.2d 61, 63 (3d Cir. 1982) ("Rule 6(e) applies ... to anything which
9 may reveal what occurred before the grand jury"); In re Grand Jury
10 Proceedings Relative to Perl, 838 F.2d 304, 306 (8th Cir. 1988)
11 (secrecy applies to information that "reveals something about the
12 intricate workings of the grand jury itself").

13 Defendant has articulated no basis for seeking information about
14 what transpired in the grand jury room during the presentation of the
15 indictment and superseding indictment in this case other than a vague
16 reference to "potential motion practice," failing to make a showing
17 of particularized need and materiality or even any cognizable legal
18 theory for such potential motion. A defendant may move to dismiss
19 the indictment alleging "a defect in instituting the prosecution,
20 including ... an error in the grand-jury proceeding." Fed. R. Crim.
21 P. 12(b) (3) (A) (v). "Dismissal of the indictment is appropriate only
22 if it is established that the violation substantially influenced the
23 grand jury's decision to indict, or if there is grave doubt that the
24 decision to indict was free from the substantial influence of such
25 violations." Bank of Nova Scotia v. United States, 487 U.S. 250, 256
26 (1988) (internal quotation marks and citations omitted). A facially
27 valid indictment is not subject to a "challenge to the reliability or
28 competence of the evidence presented to the grand jury." Id. at 261;

1 see also United States v. Basurto, 497 F.2d 781, 785 (9th Cir. 1974)
2 ("[W]hen a duly constituted grand jury returns an indictment valid on
3 its face, no independent inquiry may be made to determine the kind of
4 evidence considered by the grand jury in making its decision.").
5 Defendant does not challenge the facial validity of the indictment,
6 nor can he, as the expansive indictment and hundreds of overt acts
7 clearly set forth all necessary elements and detail much of the
8 supporting allegations.

9 Defendant fails to explain how potential COVID-19 safety
10 measures could constitute violations that "substantially influenced"
11 the grand jury's decision to indict. Since the law is clear that a
12 defendant cannot challenge the reliability or competence of the
13 evidence presented to the grand jury, any pandemic-driven safety
14 measures that could arguably influence a determination as to witness
15 credibility are beyond the scope of discovery. Thus, even if
16 witnesses wore a facemask and/or testified remotely by video,
17 defendant has failed to show "that a ground may exist to dismiss the
18 indictment" on that basis. Fed. R. Crim. P. Rule 6(e) (3) (E) (ii).⁴

19 This is because the use of masks does not render the proceedings
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21 ⁴ Whether or not certain grand jurors were excused from any
22 session does not give rise to a ground for dismissing the indictment
23 because "[d]efendants are not entitled to a jury of any particular
24 composition." United States v. Mitchell, 502 F.3d 931, 951 (9th Cir.
25 2007). Similarly, how far apart grand jurors sat, whether they wore
26 masks, and other similar details about what occurred in the grand
27 jury room does not provide a basis for dismissing the indictment.
28 "[A]n indictment is valid if (1) the grand jury returning the
indictment consisted of between 16 and 23 jurors, (2) every grand
jury session was attended by at least 16 jurors, and (3) at least 12
jurors vote to indict." United States v. Leverage Funding Systems,
Inc., 637 F.2d 645 (9th Cir. 1980), cert. denied, 452 U.S. 961
(1980). Here, there is no dispute that a quorum was present for
every grand jury session and a sufficient number of grand jurors
voted to indict on both indictments in this matter.

1 fundamentally unfair or otherwise infringe upon the jurors' ability
2 to render independent judgment. Courts have rejected arguments under
3 the Confrontation Clause--which does not apply to grand jury
4 proceedings--that facemasks during the COVID-19 pandemic infringe on
5 a jury's ability to evaluate credibility at trial. See, e.g., United
6 States v. James, No. CR1908019001PCTDLR, 2020 WL 6081501, at *2 (D.
7 Ariz. Oct. 15, 2020) ("mask requirement does not significantly
8 obstruct the ability to observe demeanor" and "[b]ecause the covering
9 of the nose and mouth does not significantly hinder observation of
10 demeanor, allowing witnesses to testify while wearing masks does not
11 materially diminish the reliability of the witnesses' testimony");
12 United States v. Crittenden, No. 4:20-CR-7 (CDL), 2020 WL 4917733, at
13 *6 (M.D. Ga. Aug. 21, 2020) ("being able to see a witness's nose and
14 mouth is not essential to testing the reliability of the testimony").
15 Defendant has failed to make a showing of particularized need for
16 information about the mechanics of how witnesses testified before the
17 grand jury and how such mechanics would establish a fatal structural
18 or constitutional flaw.

19 The novel COVID-19 pandemic has not created an avenue for
20 seeking discovery into matters occurring before the grand jury that
21 have historically been protected from disclosure. Without making any
22 showing of need or materiality, defendant is not entitled to know
23 whether a witness testified remotely or wore a facemask any more so
24 than he is entitled to know whether the witness failed to make eye
25 contact, fidgeted, had beads of sweat on his forehead, or exhibited
26 any other signs that might be argued as relevant to evaluating
27 credibility. Nor does defendant have a right to discovery into other
28 grand jury "procedures" for which he has failed to meet the

1 materiality standard, such as whether grand jurors wore masks or sat
2 at a social distance from each other, or whether the prosecutor
3 handed out or read the proposed indictment, used a microphone, stood
4 or sat for the presentation. Giving defendant access to this
5 information without a showing of particularized need and where a
6 legitimate need is difficult to even conceive would open the door to
7 frivolous and baseless inquiries about what transpired in the grand
8 jury room in every case. This Court should deny this request.

9 **C. Defendant Has Not Made a Showing of Particularized Need and**
10 **Materiality for Grand Jury Legal Instructions**

11 In his second request, defendant seeks "the legal instructions
12 provided to the grand jury for the offenses ultimately charged."
13 (Mot. at 3.) Defendant seeks this information because "what is and
14 isn't a federal crime is often the subject of significant dispute in
15 federal corruption cases." (Id.) Defendant argues that the
16 government's instructions to the grand jury will help to answer the
17 question of what is and is not a federal crime "or will at least help
18 to crystallize likely areas of dispute," adding that "the government
19 should have no problem disclosing what it believes the governing law
20 to be." (Id. at 6.) At issue is not what the government believes
21 the law to be, but grand jury transcripts that defendant seeks by
22 this motion. Defendant has failed to make a showing of
23 particularized need and materiality for the grand jury legal
24 instructions in this case.

25 The government is not required to provide any legal instructions
26 to the jury in order to secure an indictment. See United States v.
27 Kenny, 645 F.2d 1323, 1347 (9th Cir. 1981). And, even where
28 instructions are given, "the prosecutor has no duty to outline all

1 the elements of [the offense] so long as the instructions given are
 2 not flagrantly misleading or so long as all the elements are at least
 3 implied." United States v. Larrazolo, 869 F.2d 1354, 1359 (9th Cir.
 4 1989), overruled on other grounds by Midland Asphalt Corp. v. United
5 States, 489 U.S. 794, 799-800 (1989). Furthermore, "a grand jury
 6 usually sits for a long time, and it is not reinstructed every time
 7 evidence is taken," United States v. Barry, 71 F.3d 1269, 1274 (7th
 8 Cir. 1995), meaning that legal instructions provided in one case
 9 likely do not represent all legal instructions that particular grand
 10 jury received on the proposed charges during its tenure overseeing
 11 multiple indictment presentations.

12 Dismissal of the indictment for grand jury error requires
 13 "flagrant" conduct to the point that the grand jury was "deceived in
 14 some significant way" and that "significantly infringe[d] upon the
 15 ability of the grand jury to exercise independent judgment." United
16 States v. Wright, 667 F.2d 793, 796 (9th Cir. 1982) (internal
 17 citations omitted); see also United States v. DeLuca, 692 F.2d 1277,
 18 1280 (9th Cir. 1980) ("We do not dismiss an indictment valid on its
 19 face absent a showing that the government flagrantly manipulated,
 20 overreached, or deceived the [grand] jury."). Defendant makes no
 21 such allegations here nor would there be any basis for them.

22 "A split of authority has developed regarding whether the legal
 23 instructions provided by the prosecutor to the grand jury are the
 24 kind of 'ground rules'⁵ subject to disclosure, or rather whether they

25
 26 ⁵ Defendant's motion appears to conflate or misapprehend the
 27 case law's discussion of the relevant instructions for disclosure.
 28 The "ground rules" referred to by the Ninth Circuit in United States
v. Alter, 482 F.2d 1016 (9th Cir. 1973), upon which defendant relies,
 were the "court's charges to the grand jury," not the prosecutor's
 (footnote cont'd on next page)

1 go to the substance of the grand jury's deliberation and are
 2 therefore afforded a presumption of secrecy." United States v. Pac.
 3 Gas & Elec. Co., No. 14-CR-00175-TEH, 2015 WL 3958111, at *12 (N.D.
 4 Cal. June 29, 2015). In Barry, the Seventh Circuit held that a
 5 district court did not abuse its discretion in denying production of
 6 the legal instructions to a grand jury where the defendant did not
 7 show a need for them. 71 F.3d 1269, 1274. As one district court
 8 correctly reasoned, "[t]he instructions to the grand jury are
 9 intimately associated with the deliberation and judgement aspects of
 10 the grand jury function. Therefore, the instructions are matters
 11 occurring before the grand jury and require meeting standards for
 12 release of grand jury information." United States v. Welch, 201
 13 F.R.D. 521, 523 (D. Utah 2001).

14 Unsurprisingly, courts in this district have required a
 15 threshold showing of particularized need for legal instructions to
 16 the grand jury. See, e.g., United States v. Cai, No. CR 19-761-JFW,
 17 Dkt. 75 (C.D. Cal. June 1, 2020) (ruling that defendant "failed to
 18 make the requisite showing of a particularized need" for the
 19 disclosure of legal instructions to the grand jury); United States v.
 20 Chi, No. CR 16-824(A)-JFW, Dkt. 89 (C.D. Cal. June 9, 2017) (applying
 21 "particularized need" requirement for legal instructions to the grand
 22

23 legal instructions. Id. 1029 fn.21 (emphasis added). The other cases
 24 defendant cites all rely on this "ground rules" exception in Alter,
 25 without acknowledging the important distinction between the court's
 26 general charges to the grand jury about its duties and a prosecutor's
 27 legal instructions in a particular case. See, e.g., United States v.
Belton, No. 14-CR-00030-JST, 2015 WL 1815273, at *3 (N.D. Cal. Apr.
 28 21, 2015) (concluding without analysis that legal instructions are
 "part of the 'ground rules'"); United States v. Talao, No. CR-97-
 0217-VRW, 1998 WL 1114043, at *12 (N.D. Cal. Aug. 14, 1998) (relying
 on Alter in finding grand jury legal instructions discoverable).

1 jury); United States v. Ciancia, No. CR 13-902 PSG, 2015 WL 13798676,
2 at *2 (C.D. Cal. May 20, 2015) ("The 'particularized need'
3 requirement covers grand jury instructions.").

4 This Court's analysis in Chi is particularly instructive. In
5 that case, defendant argued that "because the First Superseding
6 Indictment does not allege influence in the performance of an
7 'official act' pursuant to the Supreme Court's decision in McDonnell
8 v. United States, 136 S. Ct. 2355 (2016), the grand jurors were
9 'likely were misinformed on ... the law.'" No. CR 16-824 (A)-JFW,
10 Dkt. 89 at 2. In addition, "Defendant argue[d], without any support,
11 that the grand jurors were likely misinformed as to Korean bribery
12 law." Id. The Court examined the language in the First Superseding
13 Indictment and noted that it tracked the language of the charged
14 statute, concluding that defendant failed to show "that the grand
15 jurors may have been, or were likely, misinformed as to the law."
16 Id. at 3. "[G]iven that the First Superseding Indictment tracks the
17 relevant statutory language and that Defendant offers nothing more
18 than 'mere unsubstantiated, speculative assertions of improprieties
19 in the proceedings,' the Court concludes that Defendant has failed to
20 demonstrate a particularized need for the legal instructions provided
21 to the grand jury." Id. (citation omitted).

22 Here, defendant has not even alleged that the grand jury was
23 likely misinformed as to bribery law, or that the First Superseding
24 Indictment fails to allege "official acts" or explicit quid pro quo
25 agreements for bribes involving campaign contributions. In fact, as
26 written, it appears that defendant is attempting to gain access to
27 secret grand jury transcripts in an effort to better understand the
28 government's view of the law and the case in order to prepare his

1 trial defense, as opposed to alleging any potential error in the
2 grand jury proceedings giving rise to a possible defense or motion to
3 dismiss the indictment for impropriety in the grand jury proceedings.
4 Defendant asks: "In a case of this size and complexity, why wait
5 until the end to find out what the government thinks is a crime?"
6 (Mot. at 8.) In the alternative, defendant asks the Court to "simply
7 require the government to produce an early copy of the instructions
8 that it believes apply to the charged offenses." (Mot. at 9 fn.13.)

9 Defendant can determine "what the government thinks is a crime"
10 based on the specific statutes charged and the allegations in the
11 First Superseding Indictment. The allegations in the indictment set
12 forth specific official acts as well as explicit quid pro quo
13 agreements with respect to bribes involving campaign contributions.

14 See, e.g., FSI ¶¶ 42(b), 45(b), 49, 51, 53, 54, 56, 57.

15 Defendant's failure to point to any fact indicating that the
16 government incorrectly instructed the grand jury, much less engaged
17 in flagrant or significant deception, dooms his request. See United
18 States v. Bennett, 702 F.2d 833, 836 (9th Cir. 1983) ("The
19 defendant's assertion that he has no way of knowing whether
20 prosecutorial misconduct occurred does not constitute a
21 particularized need outweighing the need for grand jury secrecy.").
22 Given the facially valid indictment in this case and the unrebutted
23 presumption of regularity in grand jury proceedings, defendant has
24 failed to make a showing of particularized need for the legal
25 instructions provided to the grand jury.

26 **IV. CONCLUSION**

27 For the foregoing reasons, the government respectfully requests
28 that this Court deny defendant's motion to compel.